

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-KC-770
)	
AAT Communications Corporations)	NAL/Acct. No.200332560005
Owner of Antenna Structure Registration No.)	
1064351 Located One Mile North of Ellis, Nebraska)	FRN 0003-4776-76
Iselin, New Jersey)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: November 5, 2002

By the Enforcement Bureau, Kansas City Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find AAT Communications Corporations (“AAT”), owner of antenna structure number 1064351 one mile north of Ellis, Nebraska, apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 17.51(a) of the Commission's Rules (“Rules”).¹ Specifically, we find AAT apparently liable for failing to exhibit the prescribed obstruction lighting.

II. BACKGROUND

2. On October 3, 2002, the FCC’s Kansas City Field Office (“Kansas City Office”) received a telephone call from the Federal Aviation Administration’s (“FAA”) Columbus, Nebraska Flight Service Office reporting a light outage on an antenna structure one mile North of Ellis, Nebraska. The FAA stated that they had received the outage report from the Beatrice Municipal Airport. Based on the information provided by the FAA, the FCC Antenna Structure Registration (“ASR”) database showed the reported antenna structure was #1064351, located at the latitude-longitude N40° 14’ 05”, W096° 52’ 41” with a listed height of 95 meters (312 feet). The registered owner of the structure is AAT.

3. On October 4, 2002 an agent from the Kansas City Office requested the assistance of the Gage County Sheriff’s Office to visually inspect this structure after sunset that evening. The structure was observed at 10:30 PM that evening by a Deputy Sheriff and the lights were confirmed out.

4. Also on October 4, 2002, the FCC agent contacted two individuals provided by the airport manager to verify the condition of the structure lighting. The first contact was the pilot who had called the airport about the lights being out. The pilot stated that the lights on this structure had been out for at least one month. The second interview was with the individual that farms the ground where the structure is located and he advised that the building at the structure is not maintained, having weeds and brush overgrown around the structure which led him to believe it had been abandoned. The farmer further stated that the structure’s lights, except for one light, had been out for a period of “several months.”

¹ 47 C.F.R. § 17.51(a).

5. Also on October 4, 2002, the FCC agent contacted AAT representative Bob Roveski concerning the outage. During the interview Mr. Roveski stated that he knew that his company owned this antenna structure but he did not have any information regarding the light outage or about how the structure lights were monitored or maintained but he would have someone with more information return the agent's call.

6. On October 7, 8, 11 and 15, 2002, the FCC agent was contacted by John Stricko of AAT. Mr. Stricko stated that he was responsible for having their antenna structures monitored and maintained. Mr. Stricko said that this structure was monitored visually by a local person but, after checking his records, was unable to determine the name of this person. Mr. Stricko was also unable to locate any maintenance records for this structure. Mr. Stricko reported that the structure lights had been repaired on October 8, 2002.

III. DISCUSSION

7. Section 17.51(a) requires all red obstruction lighting be exhibited from sunset to sunrise unless otherwise specified. AAT owns antenna structure number 1064351. This structure is required to exhibit red lights at night as prescribed in the structure's ASR. On October 3 and 4, 2002, and for at least one month prior, AAT failed to exhibit required red lights on its antenna structure between sunset and sunrise. In addition, AAT failed to monitor the condition of its antenna structure's lights,² and failed to notify the FAA of the improper functioning of these lights.³

8. Based on the evidence before us, we find AAT Communications Corporations willfully⁴ and repeatedly⁵ violated Section 17.51(a) of the Rules by failing to exhibit prescribed obstruction lighting.

9. Pursuant to Section 1.80(b)(4) of the Rules,⁶ the base forfeiture amount for failure to comply with prescribed lighting or marking is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷ Considering the entire record and applying the factors listed above, this case warrants a \$10,000 forfeiture.

² Owners of registered antenna structures with assigned lighting must monitor the structure's lights to ensure they operate properly. *See* 47 C.F.R. § 17.47.

³ Owners of registered antenna structures with assigned lighting must immediately report to the FAA any known improper functioning of any top or flashing light. *See* 47 C.F.R. § 17.48(a).

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

⁵ The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

⁶ 47 C.F.R. § 1.80(b)(4).

⁷ 47 U.S.C. § 503(b)(2)(D).

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁸ and Sections 0.111, 0.311 and 1.80 of the Rules,⁹ AAT Communications Corporations is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 17.51(a) of the Rules by failing to exhibit prescribed obstruction lighting.

11. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, AAT Commissions Corporations SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

13. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. §§ 0.111, 0.311, 1.80.

¹⁰ See 47 C.F.R. § 1.1914.

response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

16. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to AAT Communications Corporations, 517 Route 1 South, Suite 5000, Iselin, NJ 08830.

FEDERAL COMMUNICATIONS COMMISSION

Robert C. McKinney
Kansas City Office, Enforcement Bureau

Attachment